promises he will pay. It was a case where the promises were closely connected casually for it was clearly recognised by the parties that the defendant could not perform his part of the contract until after the plaintiff had performed his. It was clearly the intention of the parties that the plaintiff should discharge Coelho's debt and thereby put the defendant into a position to transfer, to give a good registrable transfer free from circumstances, which until the plaintiff performed the defendant was unable to do.

Therefore, in my opinion, the plaintiff had no cause of action until his part of the contract was performed, until he had carried out his promise. Clearly that state of affairs came into existence on 16th December when the plaintiff paid Coelho. It was not, however, in existence on the date on which he issued his Writ.

I observe from the record that at the very end of the proceedings the trial Judge asked counsel for the plaintiff if he could show any authority that payment of consideration after suit brought will entitle him to specific performance. Counsel said he could not get hold of any authority at the moment. Well, I think that had counsel taken the matter further he could not have got hold of any authority because such authority as I have been able to discover is entirely the other way.

There are three English cases and one Irish case on the point, but I do not propose to discuss them further than by referring to the case of *Eshelby* v. *Federated European Bank, Ltd.*[1] which itself deals with the other two English cases and the Irish case. That case was an appeal from the Official Referee which came before a Divisional Court. The facts were that the defendant had agreed to pay certain instalments. He failed to pay the first instalment and his failure was connected with a dispute as to the carrying out of a building contract. A writ was issued for the recovery of the first instalment but by the time the matter came on for trial before the Official Referee the second instalment had become due and the Official Referee allowed the plaintiff to amend his pleadings so as to include a claim for the second instalment which, of course, was not due when the writ was issued.

Both Swift J., and Charles J., were of the opinion that the amendment should not have been allowed and in the relevant portion of his judgment, which is too long for quotation, Swift J., based his opinion on a consideration of the cases of *Tottenham Local Board of Health* v. *Lea Conservancy Board*,[2] *Creed* v. *Creed*[3] and *Original Hartlepool Collieries Co.* v. *Gibb*.[4] With reference to *Creed* v. *Creed, supra*, Swift J., observed (at p. 260):

"Here there was no right on the part of the plaintiff in this action to sue for that second instalment when the action was brought, and *Creed* v. *Creed* is helpful in the absence of any express rule on the matter in our own Courts or in our own Rules of procedure, as showing that such a cause of action cannot be added to the writ here."

These cases to my mind are ample authority for the proposition that in the present case the plaintiff could not have amended his writ after the payment to Coelho so as in effect to treat that payment as something that had been done before the Writ was issued. *A fortiori* he was not entitled to succeed on the Writ as it stood without amendment for clearly when it was issued he had no cause of action.

In the circumstances I would dismiss the appeal with costs.

Hill and Good JJ. A. concurred.

Appeal dismissed.

Solicitors: *Jeff & Co.; P. P. Nair.*

BALWANT SINGH v. PUBLIC PROSECUTOR

[A. Cr. J. (Rigby J.) June 22, 1960]

[Ipoh — Perak Criminal Appeal No. 27 of 1960]

Criminal Procedure — Witness — Corroboration — No independent evidence — Unsafe to convict.

Mental Disorders Ordinance, 1952, s.66(2) — Identification of alleged offender.

A witness cannot corroborate his own testimony and an independent evidence is required to constitute corroboration. In sexual offences it is unsafe to convict where there is no independent evidence even when the complainant is a person of completely sane mind. It is very much more unsafe to convict in a case where the complainant is a patient in a mental home, in the absence of any corroborative evidence whatsoever as to the identification of the alleged assailant.

MAGISTRATE'S CRIMINAL APPEAL.

F. C. Arunalandom for appellant.

Abdul Hamid bin Omar (Deputy Public Prosecutor) for the respondent.

Rigby J. (delivering oral judgment): The appellant was convicted by the learned Magistrate of an offence under section 66(2) of the Mental Disorders Ordinance, 1952, of having sexual intercourse with a person who was a patient and then under treatment at the Central Mental Hospital, Tanjong Rambutan, on the 2nd November, 1959. He was sentenced to two years' imprisonment, and he now appeals against both his conviction and sentence.

The facts of the case are briefly as follows. At about 4 a.m. on the morning of the 2nd November, 1959, a female attendant at one of the female wards at the Central Mental Hospital at Tanjong Rambutan, observed a male person enter the female patients' ward. The person was wearing a white shirt and khaki trousers and had his head swathed in a garment looking like a towel. The person entered the ward and went out again carrying the complainant, who was then a voluntary patient at the hospital. Apparently the female attendant, apart from shouting out, made no attempt whatsoever to pursue the male person who had carried the patient away. About 20 minutes later the disguised person returned to the ward bringing the complainant with him and depositing her at the entrance to the ward. Again apparently the

female attendant made no attempt to intercept or apprehend the person. The complainant herself, when questioned, told a somewhat confused story that she had been taken outside by two or three persons and raped. She was examined 6 to 7 hours after the incident by a Medical Officer, who found that she was not, in fact, a virgin, and he also found no evidence of spermatozoa that would indicate that sexual intercourse had recently taken place.

The sole evidence of identification in this case is that of the complainant herself. Some days later, namely, on the 14th September, an identification parade was held in which 56 persons were present on the parade, those persons being the members of the staff of the hospital. The complainant was told — and quite wrongly told — by the Police Officer that there were 56 persons on the parade and the person who had raped her, and she was invited by the Police Officer to inspect the persons on the parade and point out the person who had raped her. Quite clearly that was a wholly improper direction by the Police Officer. At most he should, of course, have indicated to her that there might be present on the parade the person whom she alleged to have raped her. The complainant walked the full length of the parade without identifying any person and the Police Officer then told her that she should look at the faces of the persons on the parade. She then proceeded down the line and after she had got about half-way she pointed out the present appellant. There was no other evidence of identification. The complainant herself when giving her evidence told — at any rate as it appears on the record of the case — a somewhat confused and unintelligible story in that she stated that two persons had entered the ward and that the persons had carried out not only herself but another woman in the ward. She then said that she had, in fact, only been raped by one and not two persons. The story which she told was inconsistent with and, indeed, contradictory to, the previous statements that she made to the Doctor in charge of the hospital.

The learned Magistrate in his grounds of decision refers to the fact that he found the evidence of the complainant "unusually convincing." He then goes on to say that such evidence was corroborated by the identification of the appellant by the complainant at the identification parade. Now it is elementary, of course, that a witness cannot corroborate his own testimony and that independent evidence is required to constitute corroboration. There was no such independent evidence in this case. In my view, it might well have been unsafe to convict on such evidence in a case where the complainant had been a person of completely sane mind. It was very much more unsafe to convict in a case such as this, where the complainant was a patient in a mental home, in the absence of any corroborative evidence whatsoever as to the identification of the alleged assailant. The learned Deputy Public Prosecutor does not seek to support the conviction in this case. For these reasons I am of the opinion, and I so direct, that the appeal must be allowed, the conviction quashed, and the sentence set aside.

Appeal allowed.

PUBLIC PROSECUTOR v. SAM KIM KAI

[A. Cr. J. (Rigby J.) August 12, 1960]

[Penang — Criminal Appeal No. 18 of 1960]

Criminal Law and Procedure — Receiving stolen property — Explanation given by accused — Mere possibility of its truth insufficient to warrant acquittal — Explanation must raise genuine and reasonable doubt as to the guilt of the accused — Penal Code, s.411.

Procedure — Discretion of trial court to allow accused, before sentence, to withdraw plea of guilty and substitute plea of not guilty — Discretion must be exercised judicially and for valid reasons.

The respondent was charged with dishonestly retaining stolen property contrary to the provisions of section 411 of the Penal Code. He was found wearing a wrist watch which was conclusively identified as the property of the complainant and which was stolen from the complainant's premises a few months before. The respondent was the next door neighbour of the complainant. At his trial before the learned President of the Sessions Court, the respondent gave evidence that he had purchased the watch from a friend named Ah Seok for $20 about three months earlier. He failed however to produce Ah Seok as a witness at his trial. The respondent also said that he borrowed money to buy the watch from his sister, and this evidence was corroborated by the sister. The learned President acquitted the respondent.

On appeal by the learned Deputy Public Prosecutor on the ground that the learned President misdirected himself in law, and as a direct result of that misdirection placed too high a value on the respondent's story without giving adequate and proper consideration to the intrinsic worth of that story;

Held: (1) it is not sufficient, on a charge of receiving stolen property, for the accused to give an explanation which the court thinks may possibly be true. The explanation must be such as to raise a genuine and reasonable doubt as to whether the accused was guilty. However, although the learned President described the respondent's story as one that "could possibly be true," it is quite clear from his judgment as a whole that, having heard the respondent's explanation, he came to the conclusion that the explanation might not only possibly but reasonably be true. There could therefore be no question of the learned President having misdirected himself in law;

(2) it may well be that a court differently constituted, bearing in mind that the respondent was the next door neighbour of the complainant and that he failed to produce, or account for the absence of, the witness from whom he said he had bought the watch, would have come to a different conclusion in this case. But the learned President was the judge of fact, and on the facts before him; if he was left in honest and genuine doubt, he was perfectly entitled to acquit the respondent.

Appeal dismissed.